

PETITIONER:
STATE BANK OF INDIA

Vs.

RESPONDENT:
RAM CHANDRA DUBEY & ORS.

DATE OF JUDGMENT: 14/11/2000

BENCH:
S.R.Babu, S.N.Variava

JUDGMENT:

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J U D G M E N T

RAJENDRA BABU, J. :

The Central Government made a reference by an order made on 21.6.1985 under Section 10 of the Industrial Disputes Act, 1947 [hereinafter referred to as the Act] for adjudication of the following question:

Whether the action of State Bank of India in relation to their Gorakhpur Branch in terminating the services of Shri Ram, Chandra Dubey and 25 other employees of the Bank, (as mentioned in Annexure) is justified? If not, to what relief are the workmen concerned entitled?

The case put forth by the workmen is that they were appointed between 25.5.1961 to 19.1.1962 for a period of two months and continued further from time to time. They alleged that their services were terminated on 16.8.1969. The Tribunal passed an award that the workmen are entitled to be reinstated in service with effect from 16.8.1969. The award was, however, silent in regard to payment of back wages for a period between the date of termination of the workmen and their reinstatement. Challenging the said award, a writ petition [No.9901/87] was filed by the appellant before the High Court. That petition was, however, dismissed. During the course of hearing in that petition, a contention was raised on behalf of the workmen that they are entitled to back wages which was refuted by the appellant. The High Court did not go into this question inasmuch as in that petition there was no challenge to the award on that ground. The High Court felt that inasmuch as workmen are working for the last nine years on their posts by the time the case was taken up for hearing, it is not a fit case for interference under Article 226 of the Constitution and dismissed the petition.

On disposal of the writ petition an application is filed by the workmen before the Central Government Industrial Tribunal-cum- Labour Court under Section 33C(2) of the Act, against the appellant for computation of the back wages on the basis of the award and subsequent order by the High Court. The Tribunal-cum-Labour Court by an order made on 19.11.1998 allowed the application and computed the

amounts payable to the workmen by way of back wages. Against that order, a writ petition [No.8076/99] was preferred before the High Court.

The learned Solicitor General appearing for the appellant contended, as is done before the High Court, by relying upon several decisions of this court that a proceeding under Section 33C(2) of the Act is in the nature of an execution proceeding by which an existing right in favour of an employee under a settlement or award or under a statute can be executed and since no such right of back wages had accrued in favour of the workmen in terms of the award which is silent on that question, the Labour Court could not have made an order computing back wages payable to the workmen. The High Court rejected this contention in the following terms:

This submission is nothing but a subterfuge and an attempt to hair-split the controversy, firm finding has been recorded by the respondent No.4 which has also found approval of this court that the award cannot be interpreted to mean that the back wages were not implied in the relief of reinstatement. It has been held that the award dated 4.2.1987 by which the reinstatement was ordered embraced within its ambit the claim for full back wages even though it was silent on the point, application under Section 33C(2) of the Act moved by the workmen before the respondent No.24 were essentially for the purpose of computation of back wages. The respondent No.24 has not determined any new right in favour of the workmen. It has simply computed the back wages on the basis of the award of reinstatement which conferred a right for claim of back wages of the respondent workmen.

Relying on Central Inland Water Transport Corporation Ltd. vs. The Workmen & A nr., 1975 (1) SCR 153, in further elaboration of his contention, he submitted that a proceeding under Section 33C(2) of the Act is in the nature of an execution proceeding wherein the Labour Court is to calculate the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, to compute the same. Therefore, he submits that an investigation of the nature mentioned in the reference is possible and falls outside its scope. If such an investigation is taken up by the Labour Court it would amount to the exercising a function of an Industrial Tribunal which alone is entitled to make an adjudication on a question of award of back wages. He submitted that the workmen in the present case claimed that their services have been wrongfully terminated and for an appropriate relief in that regard. Thus the reference consisted of investigation as to the question whether termination of the services of the workmen is justified or not. If not, to what relief the workmen are entitled to. Thus the question of award of back wages in full or in part or none was within the scope of reference to the Tribunal. He placed reliance upon the decision of this Court in Municipal Corporation of Delhi vs. Ganesh Razak & Anr., 1995 (1) SCC 235, to explain the scope of the power exercisable by the Labour Court under Section 33C(2) of the Act. He submitted that whenever any question arises as to any matter which can be adjudicated as incidental to the main question referred to the Tribunal, it will not fall within the scope of Section 33C(2) of the Act.

However, Shri Pramod Swarup, learned counsel for the respondents, strongly supported the views taken by the Labour Court and the High Court and contended that award of reinstatement from a particular date would include in it impliedly award of back wages as well and placed reliance upon the decision of this Court in Hindustan Tin Works Pvt. Ltd. vs. Employees of Hindustan Tin Works Pvt. Ltd., 1979 (1) SCR 563 and The Central Bank of India Ltd. vs. P.S. Rajagopalan etc., 1964 (3) SCR 140. He contended that the Labour Court is competent to interpret the award on which the workman bases his claim under Section 33C(2) of the Act and in doing so, it would certainly be open to the Labour Court to expound the exact meaning and content of the award as to whether it impliedly awards back wages or not and not merely determine the quantum of the same. The learned counsel also referred to the decision in P. Kasilingam vs. P.S.G.College of Technology, 1981 (1) SCC 405, to contend that ordinarily reinstatement would be followed by award of back wages and, therefore, when there was no reason to deny the same, the award must be deemed to have included the award of back wages. He also placed reliance in this regard on the decision of this Court in Managing Director, Uttar Pradesh Warehousing Corporation & Anr. vs. Vijay Narayan Vajpayee, 1980(3) SCC 459.

When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

The principles enunciated in the decisions referred by either side can be summed up as follows: Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33C(2) of the Act. The benefit sought to be enforced under Section 33C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered, just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding.

Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages.

Hence, we allow the appeal, set aside the order made by the Labour Court, as affirmed by the High Court and dismiss the application filed under Section 33C(2) of the Act. However, in the circumstances of the case, the parties shall bear their own costs.